IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6033 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IMTIAZ AHMEDRAHIM SHAIKH - Petitioner(s)

Versus

DIVISIONAL CONTROLLER G.S.R.T.C. & 1 - Respondent(s)

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Appearance :

MR SHAILESH C PARIKH for Petitioner(s) : 1,
MR HARDIK C RAWAL for Respondent(s) : 1,
MR DIPEN DESAI, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 31/08/2005

ORAL JUDGMENT

Rule. Learned advocate Shri Raval waives service of notice of rule on behalf of the respondent learned AGP Mr.Desai waives service of notice of rule on behalf of

respondent No.2. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner-workman has challenged the legality of the award dated 30th October 2003 to the extent the same is against the petitioner. The petitioner was engaged by the respondent No.1 as a driver. Finding that the petitioner was unauthorizedly absent for a period between 2nd February 1982 and 14th February 1982, a departmental inquiry was conducted against him. The petitioner did not participate in the inquiry, however, he had sent certain medical reports claiming to be physically indisposed. The employer did not accept the defence of the petitioner and proceeded to pass the order on 22.6.82 dismissing the petitioner from service. The petitioner challenged the said order by raising reference before the Labour Court, Bharuch. By an order dated 16.9.03, the Labour Court came to the conclusion that the departmental inquiry conducted against the petitioner was illegal and improper. The main reference was thereafter taken up for final disposal. In the impugned award, the Labour Court recorded that despite opportunity being given to the

respondent herein, no evidence was led on behalf of the respondent to prove the charges against the petitioner-workman.

3. The Labour Court, on the basis of the evidence on record came to the conclusion that the petitioner did not produce proper certificates to establish his sickness. It was held that the notices issued on the petitioner by the employer were returned unserved which would go to show that he was not residing at his given address. In conclusion, the Labour Court held that the petitioner had unauthorizedly remained absent. It was also held that the petitioner had shown negligence in pursuing the reference also. On the basis of the above conclusions, the Labour Court was pleased to partially allow the reference granting reinstatement to the petitioner as a fresh engagement and denied all other benefits including backwages.

4. It is not in dispute that the order dated 16.9.03 passed by the Labour Court by which the departmental inquiry was declared as illegal was never challenged by the Labour Court and it had achieved finality. This coupled with the fact that despite the inquiry being

declared illegal, the employer did not lead any evidence before the Labour Court to prove the charges would mean that the conclusion of guilt of the petitioner remained inoperative and unenforceable. In that view of the matter, the Labour Court could not have concluded that the petitioner was guilty of misconduct of having remained unauthorizedly absent. Limiting the relief to reinstatement as a fresh engagement therefore, in my view, would not be justified.

5. The question, however, that is required to be considered is how to mould the relief claimed by the petitioner. It cannot be ignored that the petitioner had not participated in the proceedings before the Labour Court for long number of years. Reference was initially dismissed for default on 8.11.93. Misc. Application seeking restoration of the reference was once again dismissed on account of absence of the petitioner or his representative on 28.1.99. It was only pursuant to the order passed by this Court on 20th March, 2003, that the reference was revived and proceedings could be taken up further for adjudication on merits. Thus, primarily on account of the default on the part of the petitioner, reference proceedings could not proceed from

1993 till the year 2003. The petitioner, therefore, obviously cannot seek benefits from the employer when he himself was not vigilant in pursuing the reference. In that view of the matter, though punishment of dismissal order imposed by the employer is required to be set aside, the petitioner cannot be held entitled to any portion of backwages for the entire period from the date of dismissal till his actual reinstatement. It is stated before the Court that during the pendency of the petition, the petitioner has been reinstated in service. The petitioner, however, cannot be denied the benefit of continuity in service of the past period.

6. In the result, while partially allowing the petition and holding that the dismissal order was bad in law, it is further directed that the petitioner shall be entitled to continuity in service, however, without any backwages. With this direction, the petition is disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)